MICON REAL LINE LTD N'UNDI v. ENERGY UTILITY CORPORATION LIMITED, (EUCL)

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00036/2019/CA (Nyirandabaruta, P.J., Mukanyundo na Ngagi, J.) 11 Ukuboza 2020]

Amategeko agenga imanza z'ubucuruzi – Amasezerano – Kwica amasezerano – Uburiganya mu masezerano – Bifatwa nko kwica amasezerano mu gihe uwatsindiye isoko atubahirije ikorwa ry'iryo soko mu bihe biteganyijwe mu masezerano ndetse ntanakosore ibyo yasabwe n'uwatanze isoko mu gihe cyateganyijwe – Ntibyitwa uburiganya mu masezerano mu gihe uwatanze isoko aguze ku ruganda ibyari byarakoreshejwe n'uwatsindiye isoko mu gihe yananiwe gusohoza inshingano ze ku gihe cyari giteganyijwe mu masezerano, kandi mu gihe cyo kubigura akaba nta masezerano yari afitanye nawe.

Amategeko agenga imanza z'ubucuruzi – Amasoko ya Leta – Gutsindira isoko – Gusubizwa ibyatakajwe mu gukora isoko mu gihe ritongerewe igihe – Usaba gusubizwa amafaranga yatakaje akora isoko kugera aritsindiye akanarikora ariko akabuzwa n'uko hari ibyo atubahirije mu masezerano byatumye atongerewa igihe, asubizwa amafaranga afitiye ibimenyetso kandi yakoreshwejwe mu rwego ryo gushyira mu bikorwa amasezerano.

Amategeko agenga imanza z'ubucuruzi – Amasoko ya Leta – Ingwate yo kwishyingira kurangiza isoko – Uwatsindiye ntiyasaba gusubizwa ingwate yo kurangiza neza isoko mu gihe atubahirije ibyari bikubiye mu masezerano yagiranye n'uwatanze isoko bijyanye no kumushyikiriza cyangwa kumwegurira ibyo yiyemeje kumukorera.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, MICON REAL LINE Ltd na BHAVAN ELECTRICALSS PVT zakoze *Joint venture* ziregа EUCL ko bagiranye amasezerano yo kuzana no gushinga kuri *substation* ya Mont Kigali "*Transformer 20 MVA*" n'ibikoresho bijyanye nayo (*Supply and installation of a 20 MVA Transformer and Accessories at Mont Kigali Substation*), ariko ntiyubahirize, kuko ngo EUCL yatinze kwemeza imirimo bakoraga, bigatuma bakoresha igihe kirenze icyari giteganyijwe, basaba ko Urukiko ruyitegeka kubishyura 947.809,83 USD y'agaciro k'isoko.

Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ikirego cya MICON REAL LINE Ltd na BHAVAN ELECTRICALSS PVT nta shingiro gifite ngo kuko EUCL ntaho yari itegetswe kwemeza ibikorwa bakoze.

MICON REAL LINE Ltd na BHAVAN ELECTRICALSS PVT bajuriye mu Rukiko Rukuru rw'Ubucuruzi bavuga ko Urukiko rw'ubucuruzi rwa Nyarugenge rwirengagije ko hari ibyo EUCL yagombaga kubanza kwemeza, ko rutahaye agaciro imirimo yakoze mbere y'uko EUCL iyegukana, ko kandi itasubijwe "perfomance guarantee" yatanze.

Urukiko Rukuru rw'Ubucuruzi rwemeje ko hari ibyo EUCL itubahirije ku ruhande rwayo byo kwemeza "*Drawings za Transformer* na *accessories*" zari zakozwe, ko ariko nanone na MICON REAL LINE Ltd na BHAVAN ELECTRICALSS PVT nayo itubahirije izayo zo kuzana "transformer" ku gihe. Ku bijyanye n'agaciro k'imirimo yakozwe, rwasanze ihwanye na 60.806 USD ariko rwanzura ko batagomba kuyahabwa kuko yari munsi ya avance bahawe.

Ku byerekeye no gusubizwa "perfomance guarantee" rwemeje ko batayihabwa kuko batubahirije inshingano zabo.

MICON REAL LINE Ltd na BHAVAN ELECTRICALSS PVT bajuriye mu Rukiko rw'Ubujurire bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije gusuzuma ukwica amasezerano kwa EUCL n'uburiganya bwayo, kandi ko rutayitegetse kwishyura agaciro k'imirimo yose yakozwe, no gusubiza *perfomance guarantee*, ntirwanabagenera indishyi zitandukanye basaba n'amafaranga y'igihembo cya Avoka.

EUCL yireguye ivuga ko itishe amasezerano ahubwo ko yishwe n'abajuriye kuko ntaho yari itegetswe kwemeza ibyo bakoze ko ahubwo yari kujya ibisura. Yongeye kandi ivuga ko ikibazo cyaje kuba aho abajuriye nanone batatanze konti yo kwishyurirwaho nk'uko byari bitegeanyijwe mu masezerano aho bagahimba indi konti yo mu yindi banki byatumye banki yagombaga gutanga "letter of credit" itayitanga kuko nta mafaranga yariho.

Kubijyanye n'uburiganya, EUCL yireguye ivuga ko ntabwo yakoze kuko kuba yarizaniye "transformer" byaturutse ku bibazo abajuriye bagiranye na banki yagombaga kubaha amafaranga yo kuyigura amasezerano akarinda arangira ntayaratangwa.

Ku ngingo ijyanye no gusubizwa amafaranga y'imirimo yakozwe EUCL yireguye ivuga ko EUCL itasabwa kwishyura amafaranga basaba bavuga kandi batabitangira ibimenyetso.

Kubijyanye na "perfomance guarantee", EUCL yireguye ivuga ko iyi mpamvu y'ubujurire nta shingiro ifite, kuko ingingo ya 17 y'amasezerano itanga igisubizo cy'uko aya mafaranga yagombaga gufatirwa kuko abajuriye batubahirirje amasezerano.

Ku kibazo cy'indishyi zasabwaga n'abajuriye, EUCL yireguye ivuga ko nta shingiro zifite kuko ari bo bananiwe kubahiriza amasezerano kandi ari bo bishoye mu manza z'amaherere, bityo ko batari kuzihabwa.

EUCL nayo yatanze ubujurire bwuririye ku bundi isaba indishyi zo gushorwa mu manza n'igombo yagize. Abajuriye nabo biregura bavuga ko nta shingiro yazo kuko indishyi EUCL isaba zidakwiye kuko ari yo yatumye uru rubanza rubaho.

Incamake y'icyemezo: 1. Bifatwa nko kwica amasezerano mu gihe uwatsindiye isoko atubahirije ikorwa ry'iryo soko mu bihe biteganyijwe mu masezerano ndetse ntanakosore ibyo yasabwe n'uwatanze isoko mu gihe cyateganyijwe. Bityo, ibyo MICON REAL LINE LtdBHAVAN ELECTRICALS PVT bavuga ko EUCL ari yo yatinze kubyemeza nta shingiro byahabwa, kuko niba hari ibyo batangaga hanyuma EUCL ikabaha ibigomba gukosorwa (*comments*) mu minsi itarenze icumi (10) kandi nabo bakavuga ko bagiye kubikosora kugeza ubwo zemejwe ku wa 06/10/2018, ntaho bahera bavuga ko EUCL yamaze iminsi mirongo ine n'ibiri (42) itabasubiza kuko iyo babikosora vuba cyangwa se bakabikora neza bitari gufata iyo minsi 42.

2. Ntibyitwa uburiganya mu masezerano mu gihe uwatanze isoko aguze ku ruganda ibyari byarakoreshejwe n'uwatsindiye isoko mu gihe yananiwe gusohoza inshingano ze ku gihe cyari giteganyijwe mu masezerano, kandi mu gihe cyo kubigura akaba nta masezerano yari afitanye nawe. Bityo, kuba EUCL yarafashe umwanzuro wo gusaba IMP POWERS kuyigemurira *transformer,* ni kuko MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bari bananiwe gusohoza inshingano biyemeje zo kuyigemura mu gihe cyateganijwe. Byongeye kandi nuko ntaho MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd bagaragaza ko mu mpamvu

zatumye batubahiriza amasezerano bari bafitanye na EUCL kugeza kuri 27/02/2021, hari aho IMP POWERS yayinanije ku birebana no kugemura iyo *transformer* biturutse kuri EUCL.

3. Amafaranga agomba gusubizwa MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd ari ayo bafitiye ibimenyetso kandi yakoreshwejwe mu rwego ryo gushyira mu bikorwa amasezerano. Bityo, bakaba bagomba gusubizwa **162.880 USD, 2.677.980 Frw na 28.856 Rupees.**

4. Uwatsindiye ntiyasaba gusubizwa ingwate yo kurangiza neza isoko mu gihe atubahirije ibyari bikubiye mu masezerano yagiranye n'uwatanze isoko bijyanye no kumushyikiriza cyangwa kumwegurira ibyo yiyemeje kumukorera. Kuba MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd batari bujuje ibisabwa n'ingingo ya 17.4 y'amasezerano bagiranye ntibyari gutuma basubizwa *performance guarantee*, bityo ubujurire byabo kuri iyi ngingo, nta shingiro bufite.

Ubujurire bufite ishingiro kuri bimwe.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Imikirize y'urubanza Nº RCOMA 00167/2017/CHC/HCC rwaciwe ku wa 05/10/2018, Urukiko Rukuru rw'Ubucuruzi, ihindutse kuri bimwe.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko Nº 45/2011 yo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 64 na 80.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, MICON REAL LINE Ltd na BHAVAN ELECTRICALSS PVT zakoze *Joint venture* ziregа EUCL ko bagiranye amasezerano yo kuzana no gushinga kuri *substation* ya Mont Kigali "*Transformer 20 MVA*" n'ibikoresho bijyanye nayo (*Supply and installation of a 20 MVA Transformer and Accessories at Mont Kigali Substation*), ariko ntiyubahirize, kuko ngo EUCL yatinze kwemeza imirimo bakoraga, bigatuma bakoresha igihe kirenze icyari giteganyijwe, basaba ko Urukiko ruyitegeka kubishyura 947.809,83 USD y'agaciro k'isoko.

[2] Mu rubanza Nº RCOM 01094/2017/TC/NYGE rwaciwe ku wa 08/02/2018, Urukiko rw'Ubucuruzi rwa Nyarugenge rwasanze igihe cy'amezi arindwi (7) amasezerano yagombaga kumara cyararangiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT, batarashyiraho *20 MVA Transformer* n'ibikoresho bijyanye nayo (*accessoiries*), kandi ko ntahari hateganyijwe mu masezerano ko EUCL igomba kwemeza *(approval)* ibikorwa byose byakozwe, kuko abarega bavugaga ko EUCL ari yo yatumye batubahiriza amasezerano kubera gutinda kwemeza ibikorwa byabo, bityo ikaba itagomba kuryozwa ko itabikoze, ko ahubwo yubahirije inshingano zayo zo gutanga avansi, maze rwemeza ko ikirego cya MICON REAL LINE Ltd-BHAVAN

ELECTRICALS PVT nta shingiro gifite, rubategeka guha EUCL indishyi zingana na 2.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[3] MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bajuririye Urukiko Rukuru rw'Ubucuruzi bavuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko ari bo batubahirije amasezerano rwirengagije amakosa ya EUCL yo gutinda kwemeza ibyagombaga gukorwa ari nabyo byatumye ibihe isoko ryagombaga gukorwamo bitubahirizwa, ko rutahaye agaciro imirimo bakoze kugira ngo EUCL itegekwe kuyishyura mbere yo kuyegukana, no kuba Urukiko rubanza rutarategetse EUCL kwishyura amafaranga ya *performance guarantee* yafatiriye.

[4] Mu rubanza Nº RCOMA 00167/2017/CHC/HCC rwaciwe ku wa 26/10/2018, Urukiko Rukuru rw'Ubucuruzi rwasanze EUCL itarubahirije amasezerano yagiranye n'abajuriye ku birebana na *approvals* za *Drawings za Transformer* na *accessories* mu buryo impande zombi zari zabyemeranyijeho mu nama yo ku wa 26-27/07/2016; ariko ko MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT nabo batubahirije amasezerano yo kuzana *transformer* ku gihe cyasezeranywe kandi ko kuba batarabikoze nta ruhare EUCL yabigizemo.

[5] Ku birebana n'imirimo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bavuga ko bakoze kandi bagomba kwishyurwa, Urukiko Rukuru rw'Ubucuruzi rwasanze koko hari imirimo yakozwe ahari gushyirwa *transformer* ifite agaciro ka 60.806 USD, ariko bakaba batagomba kuyishyurwa kuko ayo madolari ari munsi y'ayo bahaweho nka avansi angana na 189.000 USD. Ku byerekeranye no gusubizwa amafaranga ya *performance guarantee*, Urukiko Rukuru rw'Ubucuruzi rwasanze nta mpamvu yo gusubiza abahawe isoko iyo ngwate, kuko batubahirije inshingano zabo, maze rwanzura ko ubujurire bwatanzwe na MICON REAL LINE Ltd - BHAVAN ELECTRICALS PVT Ltd bufite ishingiro kuri bimwe, kandi ko nta ndishyi zigomba gutangwa kuko buri ruhande mu baburanyi rutubahirije zimwe mu nshingano zarwo z'amasezerano bagiranye.

[6] MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd bajuririye Urukiko rw'Ubujurire bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije gusuzuma ukwica amasezerano kwa EUCL n'uburiganya bwayo, kandi ko rutayitegetse kwishyura agaciro k'imirimo yose yakozwe, no gusubiza *perfomance guarantee*, ntirwanabagenera indishyi zitandukanye basaba n'amafaranga y'igihembo cya Avoka.

[7] Urubanza rwatangiye kuburanishwa mu ruhame ku wa 21/01/2020, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bahagarariwe na GACINYA Chance Denys, bakunganirwa na Me Safari Kizito hamwe na Me Uwamahoro Marie Grâce, naho EUCL ihagarariwe na Me Ngilinshuti Jean Bosco, uwo munsi Urukiko ruburanisha ku nzitizi y'iburabubasha yatanzwe na EUCL ivuga ko abajuriye batsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe, bityo ko ubujurire bwabo butagomba kwakirwa.

[8] Ku wa 31/01/2020, Urukiko rw'Ubujurire rwaciye urubanza rubanziriza urundi, rwemeza ko inzitizi yatanzwe na EUCL nta shingiro ifite, rutegeka ko iburanisha rizakomeza ku wa 25/03/2020, kuva icyo gihe urubanza rugenda rusubikwa ku mpamvu zitandukanye.

[9] Iburanisha mu ruhame ryasubukuwe ku wa 15/07/2020, ababuranyi bahagarariwe kandi bunganiwe nka mbere, uwo munsi abajuriye babwira Urukiko ko impamvu z'ubujurire zabo

zikubiye mu ngingo enye, ari zo: 1º kuba Urukiko rwarirengagije gusuzuma kwica amasezerano kwa EUCL n'uburiganya bwayo, 2º kuba rutarategetse ko EUCL yishyura agaciro k'imirimo yose yakozwe, 3º kuba rutarategetse ko abajuriye basubizwa *performance guarantee*, no kuba rutarategetse ko bagenerwa indishyi n'igihembo cya Avoka.

[10] Uwo munsi kandi abajuriye batangiye gusobanura impamvu zabo z'ubujurire bahereye ku birebana n'uko EUCL itubahirije amasezerano ndetse batangira no kujya impaka ku ngingo ya kabiri, ariko Urukiko ruza kubona ko ababuranyi batateguye urubanza rwabo neza, kuko batasobanuraga ibyo bavuga ngo banabitangire ibimenyetso, rufata icyemezo cyo kwimurira urubanza ku wa 14/09/2020. Uwo munsi ugeze, urubanza rwarimuwe, ariko Abavoka b'impande zombi bacibwa ihazabu mbonezamubano kubera gutinza urubanza.

[11] Urubanza rwogeye kuburanishwa mu ruhame ku wa 14/10/2020, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT zihagarariwe na Gacinya Chance Denys, yunganiwe na Me Safari Kizito, naho EUCL ihagarariwe na Me Ngilinshuti Jean Bosco.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

1. Kumenya niba EUCL ari yo itarubahirije amasezerano yagiranye na MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT no kumenya niba harabayeho uburiganya ku ruhande rwayo bwagize ingaruka ku iyubahizwa ry'amasezerano.

[12] Gacinya Chance Denys n'umwunganizi we, Me Safari Kizito, bavuga ko sosiyete MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT zapiganiwe isoko ryo kuzana no gushinga kuri *substation* ya Mont Kigali *"Transformer 20 MVA"* n'ibikoresho bijyanye nayo *(accessories)* ryatanzwe na EUCL, nyuma basinyana amasezerano ku wa 11/07/2016 ndetse bakorana inama ku wa 27/07/2016, muri iyo nama bemeranya ko abatsindiye isoko bazajya bamenyesha EUCL ikintu cyose kigiye gukorwa mu gihe cy'iminsi icumi (10) ikabemerera kugikora (*approval*) nk'uko bikubiye no mu masezerano impande zombi, nyamara ko EUCL itabyubahirije kuko yabakerejeho iminsi 123 yose nk'uko byanemejwe n'Urukiko Rukuru rw'Ubucuruzi, bituma batarangiza isoko bari batsindiye; bakaba bumva EUCL igomba kubiryozwa, ariko ko Urukiko Rukuru rw'Ubucuruzi rwabyirengagije.

[13] Bakomeza bavuga ko ku birebana na *transformer*, ku wa 04/08/2016 bamenyesheje EUCL uruganda ruzayikora rwo mu Buhinde, babemerera ku wa 06/10/2016, nyuma itangira gukorwa ndetse ku wa 25/01/2017 bajyana n'abakozi ba EUCL kuyisura kuko bari barumvikanye ko EUCL ishobora kugenzura ibikoresho kugira ngo bizaze bimeze neza, basanga imashini yubatse neza, impande zombi zirabisinyira, ndetse ikaba yarashyizwe ahari hateganyijwe ko izaterekwa kuri Mont Kigali.

[14] Bavuga ariko ko n'ubwo EUCL yasuye *transformer* igasanga yarakozwe neza, yakoze uburiganya bwo kubaca inyuma ibuza ECOBANK Ltd gukora LC (Letter of Credit) yagombaga kwifashishwa mu kwishyura uruganda IMP POWERS rwari rwakoze iyo mashini, ECOBANK Ltd nayo kugira ngo ibishyire mu bikorwa isaba abajuriye ko mbere yo kwishyura igomba kubona *approvals* ziturutse muri EUCL kuri *accessoiries* na *transformer*, nyamara uregwa yanga kuzikora kubera uburiganya, bikaba byumvikana ko IMP POWERS itari kurekura transformer itishyuwe. Bavuga ko muri ubwo buriganya bwa EUCL, bamaze kubuza ECOBANK Ltd kwishyura uruganda

IMP POWERS yatangiye kugirana imishyikirano na EUCL iyisaba ko bakwikoranira imashini bakayizanira ku giti cyayo yirengagije ko hari *avance* bari baratanze, bababwira ko Bank itakwishyura EUCL idatanze uburenganzira, ibi bikaba bigaragazwa n'ubutumwa butandukanye bohererezanyaga.

[15] Me Ngilinshuti Jean Bosco avuga ko amasezerano EUCL yagiranye na MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT yagombaga kurangira ku wa 26/02/2017, akaba anateganya Banki yagombaga gucishwaho amafaranga, ko ikibazo cyavutse ubwo Gacinya Chance Denys yahabwaga avansi yari yasabye ya 20% ihwanye na 189.562 USD atanga na konti yagombaga kunyuzwaho amadolari muri ECOBANK Ltd, ariko ko nyuma yahimbye indi yafunguye muri GT Bank Ltd aba ariho ayo madolari acishwa, nuko ECOBANK Ltd yanga gukora *Letter of Credit* nk'uko bari babisezeranye, ari nacyo cyatumye aregwa mu rubanza nshinjabyaha.

[16] Ku birebana na *approvals* z'ibyagombaga gukorwa, Me Ngilinshuti Jean Bosco avuga ko zitari ziteganyijwe mu masezerano ndetse ko zitari na ngombwa, cyane cyane ku birebana na *accessories*, kuko byari bizwi ko isoko rigamije kuzana *transformer* na *accessories* zayo, nk'uko binagaragarira mu ibaruwa yo ku wa 25/04/2017, ko ahubwo EUCL yagombaga gusura ibikoresho byakozwe, kandi ko no mu nama yo ku wa 14/02/2017, Gacinya Chance Denys, uhagarariye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT yavuze ko ibyo bikoresho byaje, ko mu minsi 25 bizaba bigeze i Dar-es-Salam, ibivugwa ko hari inama yemeje *approval* z'ibyagombaga gukorwa, bikaba nta gaciro byahabwa kuko inyandikomvugo y'inama idasimbura amasezerano, kandi ko abatsindiye isoko bataburanisha *approval*s mu gihe biyemereye ko *transformer* na *accessories* zayo babyohereje.

[17] Ku byerekeranye n'uko EUCL yaba yarakoze uburiganya ibuza ECOBANK Ltd gutanga amafaranga, Me Ngilinshuti Jean Bosco avuga ko ibibazo byabaye hagati y'abatsindiye isoko n'iyi Banki nta ruhare EUCL yabigizemo, kandi ko byaturutse kuri Gacinya Chance Denys wafunguye indi konti muri GT Bank Ltd, ECOBANK Ltd ikabura amafaranga yagombaga kujya kuri konti yayo, nyamara yari azi ko bitari byemewe gushaka uwo nawe yaha isoko (subcontractor) batabanje kubyumvikanaho, EUCL ikaba rero nta kosa yakoze mu kwizanira *Transformer* kuko itayibye.

UKO URUKIKO RUBIBONA

A. Kumenya uruhande rwaba rwarishe amasezerano

[18] Kuri iki kibazo cyo kumenya uruhande rwishe amasezerano, Urukiko rurasanga rugomba kubanza gusuzuma ibijyanye na *transformer* rugakurikizaho ibijyanye na *accessories* zayo. Rurasanga kandi muri urwo rwego rugomba gusuzuma niba *approvals* za EUCL zari ngombwa mbere yuko MICON REAL LINE Ltd na BHAVANELECTRICALS PVT bagira icyo bakora, mu gihe zaba zari ngombwa rugasuzuma igihe MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bazisabiye n'igihe EUCL yazitangiye ndetse n'ingaruka zabyo mu iyubahirizwa ry'amasezerano, rukanasuzuma niba hari uburiganya EUCL yaba yarakoreye MICON REAL LINE Ltd-BHVAN ELECTRICALS PVT.

a. Ku byerekeranye na transformer

[19] Ingingo ya 64 y'Itegeko Nº 45/2011 yo ku wa 25/11/2011 rigenga amasezerano iteganya ibikurikira: "Amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye.

Ashobora guseswa ari uko babyumvikanyeho cyangwa ku mpamvu zemewe n'amategeko. Agomba kubahirizwa nta buriganya". Ingingo ya 80 y'iri Tegeko iteganya ibikurikira: "Gukora ibisabwa byose mu masezerano bikuraho inshingano zo kubikora, ko kandi iyo igihe cyo gukora ibisabwa mu masezerano kigeze kutabikora bifatwa nko kwica amasezerano".

[20] Dosiye igaragaramo amasezerano yo ku wa 11/07/2016 yo kugura no gushyira *transformer* kuri *substation* iri Mont Kigali n'ibikoresho bijyanye nayo *(accessories)* impande zombi zagiranye, ayo masezerano akaba yaragombaga kumara igihe cy'amezi 7, kuko yagombaga gutangira gushyirwa mu bikorwa ku wa 27/07/2016, akarangira ku wa 26/02/2017.

[21] Dosiye igaragaramo kandi raporo y'inama yo ku wa 27/07/2016, aho impande zombi zemeranyije ibintu bitatu by'ingenzi[11] bigomba kubanza kwemezwa na EUCL mbere yuko bishyirwa mu bikorwa, EUCL ikaba yaragomba gusubiza bitarenze iminsi icumi (10) y'akazi, naho MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bagakosora ibyo basabwe bitarenze iminsi itatu (3) y'akazi. Hagaragaramo na none ibaruwa yo ku wa 02/08/2016, EUCL yandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ibaha uburenganzira bwo kugera aho *transformer* izaterekwa, ibaruwa yo ku wa 04/08/2016, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bavuga ko EUCL yemezaga uruganda ruzakora *transformer*, ibaruwa yo ku wa 26/08/2016 n'iyo ku wa 28/09/2016 MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bavuga bandikiye EUCL bayisaba *approval* ya *design* ya *main transformer*, hakaba n'indi baruwa ya EUCL igaragaza ko *approval* yatanzwe ku wa 06/10/2016. Hagati aho ariko EUCL yohereje MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd n'inyandikomvugo y'inama yo ku wa 27/09/2016 yabaye hagati y'impande zombi, nayo igaragara muri dosiye.

[22] Nyuma yo gusuzuma ibi bimenyetso, Urukiko rurasanga bigaragara ko MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bagombaga gusaba EUCL *approvals* ku bintu byemeranyijweho mu nama yo ku wa 27/07/2016 mbere yo gukomeza imirimo, igisigaye akaba ari ukumenya niba ibihe byateganyijwe bigaragara mu nyandikomvugo y'inama yo ku wa 27/07/2016 byarubahirijwe, n'uruhande rwaba rwarabigizemo uruhare mu gihe byaba bitarubahirijwe.

[23] Mu gusuzuma niba ibihe byarubahirijwe, Urukiko rwasesenguye inyandiko zitandukanye zirimo ibaruwa yo ku wa 26/08/2016, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bandikiye EUCL bayisaba *approvals* za *design* ya *transformer*, rusanga ariko muri *e-mail* yo ku wa 16/09/2016[2], umukozi wa EUCL witwa BIHOYIKI William yarandikiye uwitwa D. CHANDAN Reddy amubaza aho bagejeje bakosora ibyo babasabye gukosora kuri *drawings* na

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[1]The Contractor will have to submit the following documents to be approved by EUCL:

- Drawing and detailed specification of material before manufacturing. Submitted documents should be in conformity with the requirements of the tender and offerpresented during bidding process.
- Design of civil works
- Work plan of temporally relocation of the old transformer.

Approval by EUCL will be done within 10 working days maximum, and any comment on the design will be accommoted by the Contractor within 3 working days.

[2] Comments from EUCL have been received and are being incorporated in revised drawing which will be availed to EUCL latest 29/09/2016.

GTP za *transformer*[3], bivuze ko mbere yo ku wa 16/09/2016, itariki *comments* za EUCL zohererejweho MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT, hari ibyo EUCL yari yasabye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT gukosora, bikaba rero bitafatwa ko ntacyo EUCL yakoze mu kwemeza *drawings* za *transformer*, ibi kandi bikaba bishimangirwa n'inyandiko yo ku wa 27/09/2016, aho D. CHANDAN Reddy yiyemereye ko ibyo EUCL yabasabye gukosora yabizirikanye, ko na *drawings* zikosoye azazitanga bitarenze ku wa 29/09/2016.

[24] Nyuma yo gusuzuma no gusesengura ibimenyetso biri muri dosiye ku bijyanye no kwemeza *drawings* za *transformer*, Urukiko rurasanga ibyo MICON REAL LINE LtdBHAVAN ELECTRICALS PVT bavuga ko EUCL ari yo yatinze kubyemeza nta shingiro byahabwa, kuko niba hari ibyo batangaga hanyuma EUCL ikabaha ibigomba gukosorwa (*comments*) mu minsi itarenze icumi (10) kandi nabo bakavuga ko bagiye kubikosora kugeza ubwo zemejwe ku wa 06/10/2018, ntaho bahera bavuga ko EUCL yamaze iminsi mirongo ine n'ibiri (42) itabasubiza kuko iyo babikosora vuba cyangwa se bakabikora neza bitari gufata iyo minsi 42, cyane cyane ko ntaho MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bigeze bagaragaza ko EUCL yaba yararengeje iminsi 10 yo gusubiza igihe bagize ibyo bayisaba nk'uko byemejwe mu nama yo ku wa 27/07/2016, bityo ibyo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVTbavuga ko EUCL ari yo yatinze gutanga *approvals* za *design* ya *transformer* bikaba nta shingiro byahabwa.

[25] Urukiko rurasanga na none, kuba mu nama yo ku wa 14/02/2017, GACINYA Chance Denys yarabwiye EUCL ko *transformer* iri mu bwato iza, ndetse ko bazayiha ibyangombwa bijyanye n'ubwikorezi bwayo ku wa 15/02/2017, bigaragaza ko nta kibazo cya *approvals* ya *transformer* cyari kigihari, ko ahubwo hari hasigaye gutegereza ko iyo *transformer* igera i Kigali mu gihe cyumvikanweho igashyirwa kuri "site" yabugenewe, ibyo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bavuga ko kwemerera EUCL ko *transformer* iri mu bwato iza byari uburyo bwo kuyifasha kubera igitutu cy'imihigo na *audit* byari biyiriho itabyitwaza, kuko itakwiregura ishingira ku kinyoma *(fraus omnia corrumpit).*

b. Ibindi bikoresho (accessories) bya transformer

[26] Ku byerekeranye na za *accessories*, dosiye igaragaza ko ku matariki yo ku wa 06/10/2016, ku wa 04/11/2016, ku wa 07/11/2016, ku wa 22/11/2016 no ku wa 23/11/2016, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bagiye bandikira EUCL bayisaba cyangwa bayibutsa kwemeza *accessories* zitandukanye. Dosiye igaragaza ko ku wa 06/10/2016, EUCL yandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ibasubiza ko ibemereye guhindura ubwoko bwa *relay*; ibaruwa yo ku wa 04/11/2016 yashubije kuri *e-mails* zo ku wa 22/11/2016[4] no ku wa 30/11/2016; iyo ku wa 07/11/2016 isubizwa yasubijwe ku wa 14/11/2016, n' iyo ku wa 23/11/2016 yasubijwe kuri uwo munsi.

[27] Nyuma yo gusuzuma inyandiko na za *e-mails* zitandukanye ziri muri dosiye zijyanye no kwemeza *accessories* za transformer (*relay, TAPCON 230, 110 KV CT and 30 KV Ring, SLD and earthing transformer*) MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bagiye

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[3] Meanwhile how far are you with the revisesd drawing and GTP for 20 MVA transformer incorporating our comments?

[4] Icyakora ku byerekeye SDL yo yagombaga gutangirwa igisubizo bidatinze.

bandikirana na EUCL ku matariki atandukanye yibukijwe haruguru guhera cyane cyane ku wa 06/10/2016 kugeza ku itariki ya 30/11/2016, Urukiko rurasanga igihe cyose MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT basabaga kwemeza/approval ikintu runaka, ntaho bigaragara ko EUCL itigeze ibasubiza ibemerera cyangwa ibasaba kugira ibyo bakosora. Rurasanga *e-mail* yo ku wa 22/11/2016 itanga imbonerahamwe y'inyandiko impande zombi zagiye zandikirana ku bijyanye na *accessories*, aho EUCL yasubije ibikurikira: *TAPCON 230 AVR* yamaze kwemezwa hakoreshejwe e-mail (*TAPCON 230 AVR has been approved through e-mail*), amakuru wasabye ku bijyanye na *earthing transformer* yamaze gutangirwa ibisobanuro (*Information you required about earthing transformer have already clarified (…*), inyandiko yemeza ivugurura rya SLD igiye kuboneka vuba (*Approval letter for revise SLD is about to be available*). Urukiko rurasanga muri iyo nyandiko hari n'ibindi bintu EUCL yasabaga abahawe isoko kwitondera nko kugerageza gusuzuma *approvals* zose bahawe hakoreshejwe *e-mail* cyangwa *official letters*, kugerageza gutanga *manufacturing documents* ku bikoresho bisigaye hakurikijwe gahunda ivuguruye, cyane ko basanga basatira iherezo ry'umushinga kandi ku bigaragara hakaba nta kirakorwa, no kubibutsa ko bakagombye kuba baratangiye guteganya no gutegura aho *transformer* isanzwe ihari izajya mu gihe *transformer* ivugwa mu masezerano irimo gukorwa izaba yageze kuri site ya Mont Kigali.

[28] Usibye ibijyanye n'inyandiko irebana no guhindura SLD itagaragara ko yaba yaratanzwe nk'uko EUCL yari yabyemeye, Urukiko rurasanga EUCL yaragiye isubiza MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ibyo basabaga byose kandi ku gihe, ukurikije ubusabe bwabo, bityo ibyo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bavuga ko bakerejwe na EUCL itaragiye yemeza ubusabe bwabo kuri *accessories* bitahabwa ishingiro. Urukiko rurasanga ntaho MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bagaragaza ko kuba SLD itaremejwe byaba byaratumye imirimo idindira cyangwa ngo ihagarare, kuko nk'uko bigaragara muri dosiye, nta kundi kwandikirana impande zombi zigaragaza kwabayeho guhera ku wa 30/11/2016 kugeza tariki ya 04/01/2017, ubwo EUCL yandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ibibutsa ibyo biyemereye kandi ibasaba guha uburemere umushinga bihutisha akazi ku buryo bushoboka.

[29] Hashingiwe ku isuzuma n'isesengura by'inyandiko na *e-mails* impande zombi zagiye zohererezanya no kubisobanuro byatanzwe, Urukiko rurasanga ibyo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bavuga ko kuba imirimo yarakerewe byaba byaratewe nuko EUCL itatangaga *approvals* nta shingiro byahabwa, kuko igihe cyose bandikaga EUCL yabasubizaga ibemerera cyangwa ibasaba kugira ibyo bakosora, bityo ubujurire bwabo kuri iyi ngingo, bukaba nta shingiro bufite.

[30] Urukiko rurasanga kuba mu nama yo ku wa 14/02/2017, GACINYA Chance Denys yarasabye imbabazi kubera ubukererwe bwo gukora *earthing transformer*, ndetse bikagaragara ko *earthing transformer*, *relays* na *cables* zitaratangira gukorwa ko kandi hari imikoranire idahwitse hagati y'abagagize *Joint venture*, ibi byose bigaragaza ko ikibazo kitari ku kuba EUCL itaratanze *approvals* za *accessories*, ahubwo kiri ku ruhande rwa Joint venture.

B. Ku byerekeranye n'uburiganya EUCL yaba yarakoreye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd

[31] Ingingo ya 64 y'Itegeko Nº 45/2011 yo ku wa 25/11/2011 rigenga amasezerano ryibukijwe haruguru iteganya ko amasezerano agomba kubahirizwa nta buriganya, bivuze ko buri ruhande

rugomba korohereza urundi mu gushyira mu bikorwa amasezerano, rwirinda ibyatuma runanirwa kuyasohoza.

[32] Ku byerekeranye n'uru rubanza, hagomba gusuzumwa niba kuba EUCL yarageze aho ikagura *transformer* mu ruganda IMP POWERS yirengagije ko hari ibyo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bari barakoze no kuba yaranze kubaha *approvals* zasabwaga na ECOBANK Ltd byafatwa nk'uburiganya yabakoreye.

[33] Ku byerekeranye no kuba EUCL yarageze aho igakorana imishyikirano n'uruganda IMP POWERS nayo ndetse ikagura *transformer* byafatwa nk'uburiganya, dosiye igaragaza ko amasezerano hagati y'impande zombi yagombaga kurangira ku wa 26/02/2017, bivuze ko kuri iyo tariki *transformer* n'ibikoresho byayo (*accessories)* byagombaga kuba byarageze kuri *substation* ya Mont Kigali kandi byaramaze kuhaterekwa. Dosiye igaragaza kandi ko ku itariki ya 04/01/2017 yibukijwe haruguru, EUCL yandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ibibutsa ibyo biyemereye gukora inabibutsa uburemere bw'umushinga ndetse inabasaba kwihutisha imirimo, bishatse kuvuga ko yari itangiye kugira impungenge yuko hashobora kuzaba ingorane mu gusohoza amasezerano.

[34] Dosiye igaragaza ko ku wa 09/01/2017, impande zombi zahawe ubutumire bwo kujya mu Buhinde gusura *transformer* mu ruganda rwa IMP POWERS, ku wa 25/01/2017, hakorwa inyandikomvugo y'isura n'isuzumwa rya t*ransformer* mu ruganda, yerekana ko iyo *transformer* yashimwe, ariko EUCL ivuga ko hari ibigomba gukosorwa, kuko *bushings* zari iza 245 KV kandi *transformer* izakora kuri 110 KV, icyakora nyuma yaho mu ibaruwa yo ku wa 08/02/2017, EUCL yaje kwemera ko *transformer* yatangwa bitabaye ngombwa ko bikosorwa, ariko ibwira MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ibyo bagomba kwitaho, bivuze ko *transformer* yari ihari kandi yari yashimwe na EUCL. Kuri iyo tariki, EUCL yandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd ibabwira ko ibemereye gupakira *transformer* iyizana i Kigali[5]', ariko byarangiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT inaniwe kwishyura *transformer* mu ruganda, bituma urwo ruganda rutayitanga, nyamara EUCL yari yayishimye inemera ko yapakirwa.

[35] Dosiye igaragaramo na none raporo y'inama yabaye hagati ya EUCL na MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ku wa 14/02/2017, aho MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bemezaga ko *transformer* yapakiwe mu bwato ku wa 12/02/2017, ko ibyangombwa bijyanye n'ubwikorezi bwayo bazabigeza kuri EUCL ku wa 15/02/2017, ko *transformer* izagera Dar-es- Salaam mu minsi 25 uhereye ku wa 12/02/2017, mu minsi 10 ikaba yageze i Kigali iva Dares- Salaam, ko guhuza amapiyese (pieces) yayo, kuyisuzuma no kuyakira bizamara iminsi 14, ndetse ko impapuro z'ubwikorezi bwayo niziboneka, EUCL izishyura MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT 20% y'agaciro kayo. Ku byerekeranye na *transformer*, iyo raporo igaragaza ko nta kibazo kijyanye nayo cyari kikiriho, ariko ko kuri *accessories* hakiri ibibazo, nko kuba *earthing transformer* na *relays* zitaratangira gukorwa mu ruganda, nubwo nta mpamvu yagaragajwe yatumye zidakorwa.

[36] Mu ibaruwa yo ku wa 14/02/2017, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT basabaga ko amasezerano yakongererwa igihe, ku wa 28/02/2017 EUCL isubiza ibahakanira,

[5] We therefore authorize you to ship the transfor with 220 KV bushings but also bearing in mind the following.

ivuga ko nta mpamvu zumvikana zo gusaba kongererwa igihe; ku wa 21/03/2017, nabwo bongera gusaba kongerwa igihe cy'iminsi 90, ariko nabwo bahakanirwa ku mpamvu nk'iza mbere. Dosiye igaragaramo na none ibaruwa yo ku wa 15/03/2017, EUCL yandikiye uruganda IMP POWERS iyibwira ko yifuza gukorana nayo ikayigurira *transformer* yari yarakoreye MICON REAL LINE LtdBHAVAN ELECTRICALS PVT, iyo baruwa MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bakaba bayifata nk'ikimenyetso kigaragaza uburiganya bwa EUCL, ariko yo ikavuga ko nta buriganya bwabayeho, kuko nta masezerano yari igifitanye nabo, kandi ko nta bundi buryo yabonaga yabona *transformer* kugira ngo uwo mushinga urangire.

[37] Dosiye igaragaza na none ko hari umukozi wa EUCL wagiye yandikirana n'uruganda kuri WhatsApp, arusaba ko bakorana mu buryo butaziguye (directement), MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bakaba batanga uko kwandikirana (*messages*) nk'ikimenyetso kigaragaza ko habayeho uburiganya. Hagaragaramo kandi ibaruwa yo ku wa 17/03/207, ECOBANK yandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd ibabwira ko kugira ngo ibahe *Letter of credit* bagomba kugaragaza ko *accessories* zemejwe, ndetse n'uruganda rukemeza igihe zizabonekera, bakanagaragaza niba EUCL yemeye kongera igihe cy'amasezerano.

[38] Mu mabaruwa atandukanye EUCL na IMP POWERS bagiye bandikirana, bigaragara ko ibiganiro birebana n'iyo *transformer* byatangiye mu kwezi kwa Werurwe 2017, mu gihe amasezerano EUCL na MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT arebana no kugemura *transformer* yari yararangiye ku wa 26/02/2017, kuko usibye no kuba byarageze kuri iyo tariki *transformer* itarakurwa mu ruganda, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bari baratangiye kugaragaza ko batubahiriza ibyo bari biyemereye mu nama yo ku wa 14/02/2017, urugero akaba ari nk'inyandiko z'ubwikorezi bwa *transformer* zagombaga gutangwa ku wa 15/02/2017, nabo bahagita bahabwa 20 % y'agaciro ka *transformer*, ariko izo nyandiko zikaba zitarigeze zitangwa.

[39] Bigaragara kandi ko EUCL yafashe umwanzuro wo gusaba IMP POWERS kuyigemurira *transformer*, kuko MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bari bananiwe gusohoza inshingano biyemeje zo kuyigemura mu gihe cyateganijwe, ibi bigashimangirwa n'uko mu ibaruwa yo ku wa 23/03/2017, EUCL yandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ibamenyesha ko mu nyungu z'umushinga wo kuzana iyo *transformer*, ishobora kwemera kongera igihe cy'amasezerano, niba mu gihe kitarenze taliki ya 28/03/2017, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bayigezaho ibivugwa muri iyo baruwa birimo ingwate yo kurangiza neza imirimo yongerewe kugera 31/07/2017, impapuro zerekana ko yatumije *accessories* za *transformer* hamwe n'inyandiko bakoranye na Banki zerekana ko bagifite amafaranga ahagije yo gutumiza ibyo bikoresho birimo transformer n'ibindi[6]. Urukiko rurasanga MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd batarigeze bagaragaza ko bujuje ibyo basabwe kugira ngo hasuzumwe ibyo kuyongerera igihe cy'amasezerano, cyane cyane ko n'ingingo ya 33.1 y'amasezerano iteganya ko EUCL ifite uburenganzira bwo kuba yakongera igihe cyanwa kutacyongera[7], bityo kuba EUCL yaragezaho

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[6] Ibaruwa yo ku wa 23/03/2017 EUCL yandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd (Fulfilment of conditions to contract extention)

[7] If at any time during performance of the Contract the Supplier or its subcontactors should encounter conditions impeding tmely delivery of the Goods (….), the supplier shall promptly notify the Procuring Entity in writing of the

ikagura *transformer* na IMP POWERS ntabwo byafatwa nk'uburiganya, ahubwo yabikoze imaze kubona ko MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bananiwe gusohoza inshingano zabo ku gihe cyari giteganyijwe mu masezerano, kandi nta n'amasezerano yari igifitanye nabo.

[40] Urukiko rurasanga indi impamvu igaragaza ko EUCL nta buriganya yakoze, nuko ntaho MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd bagaragaza ko mu mpamvu zatumye batubahiriza amasezerano bari bafitanye na EUCL kugeza kuri 27/02/2021, hari aho IMP POWERS yayinanije ku birebana no kugemura iyo *transformer* biturutse kuri EUCL, ahubwo ikigaragara nibo bananiwe kwishyura transformer.

[41] Ku birebana n'uburiganya MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd bavuga ko EUCL yakoze, kuko yatumye ECOBANK Ltd itongera igihe cy'ingwate yo kurangiza neza imirimo no kugaragaza ko bafite amafaranga ahagije yo gutumiza ibikoresho, Urukiko rurasanga mu ibaruwa ECOBANK Ltd yandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd isubiza ku busabe bwa *Credit* ya 254.000 USD, iyo Banki yarabamenyesheje ko kugira ngo ibyo basabye bisuzumwe babanza bakayigaragariza ibirebana n'igihe uruganda ruzabahera ibikoresho bazagemurira EUCL hamwe n'ibaruwa yerekana ko igihe cy'amasezerano yo kugemura ibyo bikoresho ifitanye na EUCL cyongerewe, kuba bataratanze ibyo basabwe bakaba batashingira ku makosa yabo ngo bagire ibyo bayungukiramo.

[42] Urukiko rurasanga na none mu ibaruwa yo ku wa 28/03/2017, ECOBANK Ltd yarandikiye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ibasubiza ku birebana no kugaragaza inyandiko yemeza ko bafite amafaranga ahagaje yo kwishyura ibikoresho bivugwa mu masezerano, iyo Banki yarababwiye ko yiteguye kubikora ariko mu gihe bujuje ibisabwa, bityo kuba ECOBANK Ltd yarasabye MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT kuzuza ibisabwa kugira ngo bahabwe ibyo bayisabaga, ntaho bihuriye na EUCL, ahubwo ibyo n'imikoranire ya Banki n'umukiriya wayo.

[43] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ibyo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bavuga ko EUCL yayikoreye uburiganya nta shingiro byahabwa.

2. Kumenya niba EUCL yasubiza MICON REAL LINE Ltd-BHAVAN ELECTRICALS ibyo batakaje kuri iri soko

[44] Gacinya Chance Denys n'umwunganizi we bavuga ko avansi bari bahawe ingana na 189.000 USD, EUCL yayishubije kandi ko n'imirimo yose MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bakoze batayishyuwe, basaba ko EUCL yayishyura kuko ari yo itarubahirije amasezerano. Basaba gusubizwa 1.000.000 Frw batanze nk'igishoro cyo gushaka isoko harimo ayo gupiganwa, n'ay'urugendo batanze mu rwego rwo gutegura gupiganwa angana na 660.317 USD ahwanye na 21.000.000 Frw, amafaranga yatanzweho ingwate angana na 2.500.000 Frw imishahara y'abakozi bakurikiranye umushinga ayatanzwe mu ikoreshwa rya *transformer*. Bavuga ko igiteranyo cy'amadolari basaba ari 947.000 nk'uko babigaragaje mu mbonerahamwe y'ibimenyetso iri muri dosiye (IECMS).

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delay, its likely duration and its cause. As soon as practicable after receipt of the Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time (….).

[45] Me Ngilinshuti Jean Bosco avuga ko iyi mpamvu y'ubujurire nta shingiro ifite, kuko MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ari bo bishe amasezerano, ko n'amafaranga batanze mbere y'amasezerano badakwiye kuyasubizwa kuko abapiganwa bari benshi. Avuga kandi ko EUCL itasabwa kwishyura amafaranga abajuriye bavuga ko bahaye uwakoze *transformer* kandi batabitangira ibimenyetso, ko EUCL yazanye iyo *transformer* ari uko yari yayishyuye, naho ibyo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd bavuga ko nabo bishyuye, iki kibazo kitareba EUCL, icyakora ko yavuze ko atishyuwe ari yo mpamvu yinginze EUCL ngo igure iyo *transformer* kuko igenewe gukora mu Rwanda gusa, ko rero batahereye kuri *avance* abajuriye bavuga ko batanze.

[46] Ku byerekeranye n'imishahara y'abakozi ba sosiyete bakurikiranye umushinga, avuga ko iki kitareba EUCL kuko atari abakozi bayo, kandi ko n'iyo *transformer* imaze kuza yateruwe na Polisi. Avuga ko igihombo abajuriye baba baratewe na Banki nacyo kitabareba kuko mu ibaruwa ECOBANK Ltd yabandikiye ku wa 01/08/2016 yabamenyeshaga ko avansi igomba gushyirwa kuri konti iri muri iyo Banki kandi ko itabikora itarabona ko amasezerano yongerewe igihe. Ku byerekeranye n'ibyagiye ku rugendo rwo mu Buhinde, avuga ko EUCL itabyishyura kuko yarwishyuriye abakozi bayo, bityo bakaba badakwiye gusaba gusubizwa amafaranga batanze kuri urwo rugendo.

UKO URUKIKO RUBIBONA

[47] Ingingo ya 3 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ibikurikira: "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Umucamanza ashobora nyamara gutegeka umuburanyi wese gutanga gihamya y'ibimenyetso afite".

[48] Ku byerekeranye n'amafaranga MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd basaba gusubizwa, Urukiko rurasanga ayo bagomba gusubizwa ari ayo bafitiye ibimenyetso kandi yakoreshwejwe mu rwego ryo gushyira mu bikorwa amasezerano. Urukiko rumaze gusesengura imbonerahamwe y'inyandiko MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd batanze nk'ibimenyetso by'amafaranga bakoresheje bakora isoko rivugwa muri uru rubanza, rurasanga EUCL igomba kubasubiza **24.000.00 USD** y'imishahara bahembye Preetanchu Shrivastava/substation Engineer, kuko ashingiye ku masezerano yasinywe ku wa 27/07/2016, kandi akaba ayafitiye ibimenyetso, **32.000.000 USD** yahembwe Saravana Permal Pominatha/ ELECTRICALS Engineer, kuko ashingiye ku masezerano y'akazi ya Saravana Permal pominatha/ ELECTRICALS Engineer yagiranye na MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT ku wa 07/07/2020, kandi hakaba hari na ibimenyetso bigaragaza ko koko bayahembye mu byiciro ku wa 07/08/2016, ku wa 25/03/2017 no ku wa 27/03/2017, **50.880,00 USD** yishyuwe SHINEX ENGG yo mu Buhinde yakurikiranaga ikorwa rwa *transformer*, kuko ahari amasezerano ashingiyeho yo ku wa 12/09/2016 kandi haba hari n'ibimenyetso bigaragaza ko yishyuwe.

[49] Urukiko rurasanga na none 119.000.00 USD, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd bavuga ko yishyuwe D. Chundan/Reddy Bis, koko yarishyuwe hagati ya 05/08/2016 na 30/03/2017 hashingiwe ku masezerano y'akazi yo ku wa 01/12/2015 ya D. Chundan/ReddyBis wari *Project manager* w'umushinga wa Mont Kigali nk'uko agaragazwa na

za Receipt z'imishahara yahawe. Rurasanga ariko MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd batayasubizwa yose, kuko amezi 15 agaragara muri ayo masezerano arenze amezi 7 ateganyijwe mu masezerano EUCL yagiranye na MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd, bivuze ko basubizwa ahanye n'amezi arindwi (119.000 USD x 7/15) = **55.533 USD.**

[50] Urukiko rurasanga andi yasubizwa MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd ari **22.062 Rupees** y'itike y'indege GACINYA Chance Denys yakoresheje (Bhubaneshwar to Mumbai) ku wa 26/01/2017, na **6,794 Rupees** y'itike y'indege ijya Chennal-Mumbai yo ku wa 20/02/2017 yagendeweho na Saavana Perumal, umukozi wabo. Ku bijyanye n'imirimo MICON REAL LINE LtdBHAVAN ELECTRICALS PVT Ltd bakoze kuri site ya Mont Kigali, raporo yo ku wa 02/05/2017 yatanzwe na EUCL igaragaza ko hakozwe imirimo ihwanye na **2.677.980 Frw**. Uruhande rw'abajuriye nta bimenyetso bijyanye n'ikiguzi cy'imirimo yakozwe kuri site bagaragaza. Mu gihe MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT batagaragaza ikiguzi cy'imirimo bakoreye kuri site, kandi EUCL yarabasabye ko bajya kuri site kubara imirimo yakozwe bakabyanga nk'uko bigaragara mu baruwa yabo yo ku wa 25/04/2017, Urukiko rurasanga hahabwa agaciro imirimo yatangiwe ibimenyetso na EUCL kangana na **2.677.980 Frw**.

[51] Hashingiwe ku isesengura ryibimenyetso byatanzwe na MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT, Urukiko rurasanga EUCL igomba kubasubiza **162.880 USD, 2.677.980 Frw na 28.856 Rupees,** kuko ari yo afitiwe ibimenyetso kandi akaba yarakoreshejwe mu bikorwa EUCL yaherereyeho ibona *transformer*, kuko nk'uko byibukijwe haruguru EUCL yayiguze na IMP POWERS yaramaze gukorwa, kandi imirimo yo kuyikoresha mu ruganda yarakozwe na MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT, bityo kutasubiza ibyo batanze bifitanye isano ritaziguye n'ikorwa rya *transformer* n'aho izashyirwa *(installation),* byaba ari ukwikungaza nta mpamvu *(enrichissement sans cause*), cyane cyane ko 189.567 USD ya avansi yari yaratanzwe na EUCL yayishubijwe, nk'uko bigaragazwa n'ibaruwa yo ku wa 12/07/2017 CERTA Law, yandikiye Me SAFARI KIZITO, mu izina rya GT BANK RWANDA Ltd.

[52] Urukiko rusanga 22.500 USD, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd bavuga ko yishyuye icumbi, batagomba kuyasubizwa kubera ko inyandiko iri muri dosiye igaragaza ko yishyuwe tariki ya 30/04/2017, kandi icyo gihe amasezerano yari yararangiye. Indi mpamvu batayasubizwa, nuko nubwo Urukiko rwemera ko GACINYA Chance Denys yagiye Buhinde, ariko ibimenyetso atanga, usibye kuba cyanditseho iminsi 45, n'imbonerahamwe yayo madolari bishyuza, ntabwo bagaragaza amatariki nyayo ahwanye n'iyo minsi 45 bavuga, abacumbikiwe abo aribo, ndetse nta hoteli zabacumbikiye, iki kimenyetso kigaragaramo urujijo ku buryo Urukiko rutagiishingiraho rwemeza ko EUCL yayasubiza. Ikindi kigaragaza urujijo ni uburyo baramaze iminsi 45 mu Buhinde bakurikirana ibya transformer, kandi nk'uko byavuzwe haruguru, mu nama yo ku wa 14/02/2017, GACINYA Chance Denys yabwiye EUCL ko *transformer* iri mu bwato, hakaba hakwibazwa icyo bari kuba bakora mu Buhinde, kandi barasuye transformer mu kwezi kwa Mutarama 2017 bakayishima.

[53] Urukiko rurasanga andi mafaranga yose MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bishyuza agaragara mu mbonerahamwe bashyize muri *system* ya *IECMS*, ariko batagaragariza ibimenyetso ko bayishyuye, ntaho rwahera rutegeka EUCL kuyabasubiza.

3. Kumenya niba MICON REAL LINE Ltd-BHVAN ELECTRICALS Ltd bakwiye gusubizwa amafaranga ya performance guarantee

[54] Gacinya Chance Denys n'umwunganizi we bavuga ko MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT batanze *performance guarantee* ingana na 94.000 USD, bakaba basaba ko EUCL yayibasubiza.

[55] Me Ngilinshuti Jean Bosco avuga ko iyi mpamvu y'ubujurire nta shingiro ifite, kuko ingingo ya 17 y'amasezerano itanga igisubizo cy'uko aya mafaranga yagombaga gufatirwa kuko abajuriye batubahirirje amasezerano. Asobanura ko EUCL yasabye gusubizwa aya mafaranga kubera ko GT Bank Ltd itubahirije ibyo gukora transfert y'amafaranga muri ECOBANK Ltd.

UKO URUKIKO RUBIBONA

[56] Ingingo ya 17.4 y'amasezerano yo ku wa 11/07/2016 iteganya ko gusubizwa *Performance Security* bizakorwa mu iminsi 30, nyuma y'aho ibyaguzwe byose byeguriwe umuguzi, kandi byemewe cyangwa byakiriwe.

[57] Nk'uko byagaragajwe haruguru, kuba MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd batarashoboye gutanga *transformer* na *accessories* zayo, nyamara amasezerano yarateganyaga ko azarangira ku wa 27/02/2017, basanga bitagishobotse, mu nama yo ku wa 14/02/2017, GACINYA Chance Denys akabwira EUCL ko *transformer* yapakiwe ku wa 12/02/2017, ko kandi ku wa 10/04/2017 byose bizaba byarangiye bayiyimurikira, ariko bikarangira batabyubahije, Urukiko rurasanga nta kuntu bari gusaba gusubizwa *performance guarantee* kandi bigaragara ko batubahirije ibiteganyijwe mu ngingo ya 17.4 y'amasezerano yo ku wa 11/07/2016.

[58] Urukiko rurasanga ibyo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bireguza ko kutubahiriza amasezerano byagiye biterwa nuko batabonaga *approvals* bitahabwa ishingiro, kuko nk'uko byagaragajwe haruguru, hari ibimenyetso bigaragaza ko *approvals* basabaga bazihabwaga, cyangwa se bagasubizwa ko zidakenewe, ndetse ko mu nama yo ku wa 14/02/2017, ubwo basezeranyaga EUCL ko *transformer* yapakiwe mu bwato ku wa 12/02/2017, ko kandi izamurikirwa EUCL ku wa 10/04/2017, ari ibyerekana ko nta kibazo cy'uko EUCL yanze kubaha *approvals* nk'uko babyireguza.

[59] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd batari bujuje ibisabwa n'ingingo ya 17.4 y'amasezerano yibukijwe haruguru byari gutuma basubizwa *performance guarantee*, bityo ubujurire byabo kuri iyi ngingo, nta shingiro bufite.

4. Kuba Urukiko Rukuru rutarategetse ko abajuriye bagenerwa indishyi n'igihembo cya Avoka

[60] Abajuriye bavuga ko bari basabye 200.000.000 Frw kubera ko EUCL yagiye irangwa no kugira uburiganya (*mauvaise foi*) ikabananiza bikabateza igihombo, 22.000.000 Frw y'igihembo cya Avoka, 10.000.000 Frw y'ikurikiranarubanza, 125.000 Frw y'amagarama n'igihembo cy'Umuhesha w'inkiko, basaba ko aya mafaranga bayahabwa kandi akazakomeza kwiyongera.

[61] Me Ngilinshuti Jean Bosco, avuga ko ku birebana n'indishyi abajuriye bavuga ko batahawe, nta shingiro bifite kuko ari bo bananiwe kubahiriza amasezerano kandi ari bo bishoye mu manza z'amaherere, bityo ko batari kuzihabwa.

UKO URUKIKO RUBIBONA

[62] Urukiko rurasanga nk'uko byagaragajwe haruguru, kuba EUCL atari yo yishe amasezerano, MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT batari bakwiye guhabwa indishyi, amafaranga y'igihembo cya Avoka, ay'ikurikiranarubanza, ay'amagarama ndetse n'ay'ibihembo by'Umuhesha w'inkiko basabaga, bityo ubujurire bwabo kuri iyi ngingo bukaba nta shingiro bufite.

B. UBUJURIRE BWURIRIYE KU BUNDI

[63] Avoka wa EUCL avuga ko hari ibyo Urukiko Rukuru rw'Ubucuruzi rwavuze bidateganyijwe mu masezerano isaba ko bikosorwa. Isobanura ko mu rubanza rwajuririwe, mu gika cya 12, ku rupapuro rwa 5, Urukiko Rukuru rw'Ubucuruzi rwavuze ko EUCL nayo hari inshingano itubahirije zirebana no kugira ibikorwa yemeza mbere y'uko bishyirwa mu bikorwa, nyamara ko kuri iyi ngingo Urukiko rwibeshye rugendera gusa ku bivugwa n'abajuriye, nyamara ntaho biteganyijwe mu masezerano impande zombi zashyizeho umukono.

[64] Avuga kandi ko Urukiko rwitiriye EUCL imvugo zitari izayo ku rupapuro rwa 7 mu gika cya 17 aho rwavuze ko idahakana imirimo yakozwe n'abajuriye kandi mu by'ukuri ntaho yigeze ibyemera.

[65] Akomeza avuga ko Urukiko rwanze kugenera EUCL indishyi kandi yarasobanuye ishingiro ryazo kubera imigirire y'abajuriye yayiteje igihombo gikomeye, bakaba baranayishoye mu manza z'amaherere. Asaba indishyi z'igihombo *(manque à gagner)* zingana na 3.369.088.800 Frw abazwe nk'uko bigaragara muri mbonerahamwe *(tableau)* bashyikirije Urukiko, akaba ari yo EUCL igaragariza ibimenyetso (Imana Steel na WASAC), nubwo bwose hari ibindi bihombo binyuranye yagize itiriwe ibara kandi byose bikomoka ku kutubahiriza amasezerano ku ruhande rw'abajuriye, ikaba inasaba 15.000.000 Frw y'ikurikiranarubanza na 20.000.000 Frw y'igihembo cya Avoka.

[66] Abajuriye bavuga ko nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze mu kwemeza ko EUCL yakoze amakosa kuko ari byo**,** ko kuba yaremeje ko hari imirimo bakoze nabyo ari ukuri kuko EUCL itabihakana.

[67] Bavuga ko indishyi EUCL isaba zidakwiye kuko ari yo yatumye uru rubanza rubaho, kuko byari byoroheye impande zombi kurebera hamwe imirimo yakozwe bakabihuza n'ibiciro byayo maze hakagaragara amafaranga yishyurwa MICON arikoko atari ko EUCL yabigenje.

UKO URUKIKO RUBIBONA

[68] Ingingo ya 3 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo yibukijwe haruguru iteganya ko buri muburanyi agomba kugaragaza

ukuri kw'ibyo aburana, ko kandi Umucamanza ashobora gutegeka umuburanyi wese gutanga gihamya y'ibimenyetso afite.

[69] Ku byerekeranye n'ibyo EUCL ivuga ko Urukiko Rukuru rw'Ubucuruzi rwavuze ko EUCL nayo hari inshingano itubahirije zirebana no kugira ibikorwa yemeza mbere y'uko bishyirwa mu bikorwa, Urukiko rurasanga byakosowe muri uru rubanza. Naho ibyerekeranye nuko Urukiko rwitiriye EUCL imvugo zitari izayo ku rupapuro rwa 7 mu gika cya 17 aho rwavuze ko idahakana imirimo yakozwe n'abajuriye kandi mu by'ukuri ntaho yigeze ibyemera, Urukiko rurasanga EUCL idatanga ibimenyetso bivuguruza imvugo y'Urukiko Rukuru rw'Ubucuruzi.

[70] Ku byerekeranye n'indishyi z'igihombo (manque à gagner) zingana na 3.369.088.800 Frw, EUCL isaba ivuga ko yazitewe n'uko MICON REAL LINE LtdBHAVAN ELECTRICALS PVT Ltd batubahirije amasezerano, Urukiko rurasanga imibare itanga itashingirwaho, kuko usibye kubivuga gusa nta bimenyetso ibitangira ko ayo masoko ivuga yari iyafitiye amasezerano ku buryo yahise aseswa kubera *transformer* itabonetse. Urukiko rurasanga kuba nta masezerano ahari, n'imibare EUCL ishingiraho nta shingiro yahabwa.

[71] Ku byerekeranye n'amafaranga y'igihembo cya Avoka n'ay'ikurikiranarubanza EUCL isaba, Urukiko rurasanga nubwo MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd batasohoje amasezerano yo kuzana no gushinga *transformer* na *accessories* zayo kuri site ya Mont Kigali nk'uko impande zombi zabyumvikanyeho, hari amafaranga ya avansi agomba kwitabwo habarwa ayakoreshejwe n'agomba gusubizwa EUCL, bityo kuba buri ruhande hari ibyo rutsindiye, nta mafaranga y'igihembo cya Avoka n'iy'ikurikiranarubanza akwiye gutangwa muri uru rubanza.

III. ICYEMEZO CY'URUKIKO

[72] Rwemeje ko ubujurire bwa MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT bufite ishingiro kuri bimwe;

[73] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na EUCL bufite inshingiro kuri bimwe;

[74] Rwemeje ko imikirize y'urubanza Nº RCOMA 00167/2017/CHC/HCC rwaciwe ku wa 05/10/2018, Urukiko Rukuru rw'Ubucuruzi, ihindutse kuri bimwe;

[75] Rutegetse EUCL Ltd gusubiza MICON REAL LINE Ltd-BHAVAN ELECTRICALS PVT Ltd 162.880 USD, 2.677.980 Frw na 28.856 Rupees;

[76] Ruvuze ko amagarama yatanzwe ahwanye n'ibyakozwe mu rubanza.